Supreme Court, U.S.
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NO. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

SALVADORE NOBILE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To the United States Court Of Appeals
For the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Salvador Nobile
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Marietta, Pennsylvania 17547
Attorney, pro se

21 pp

QUESTIONS PRESENTED

1. Whether there was proper execution of the summons;

2. Whether there was authority for the summons;

3. Whether the statute for the summons was revealed; and,

4. Whether there was jurisdiction.

LIST OF PARTIES

All parties are listed on the cover page

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Miscl.

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JURISDICTIONAL ST. .TEMENT

This petition for certiorari, filed pursuant to 28 U.S.C. § 1254 (1), seeks review of the Third Circuit Court of Appeal's Opinion in this case, filed on December 5, 1995, reported as Case No. 95-1212 & 95-1213. (See attached Appendix at pp. 1a) The petition for a Rehearing and Suggestion for Rehearing In Banc, was denied on March 15, 1996. (See Appendix pp. 2a).

STATUTORY PROVISIONS

This case simply involves the clear reading of statutes relied on by the petitioner, and the reading in complete contradiction to this Court's holding by the lower courts. Title 26 U.S.C. § 6065 was enacted by Congress with the following words:

> **Sec. 6065. Verification of returns.**
>
> Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Obviously the words chosen by Congress to place in that statute were intended to reflect their intent and purpose.

Clearly the intent was to recognize the complexity of the internal revenue laws and charge any person or entity with the responsibility to insure that the documents they executed were true and correct as to every material matter, whether government or citizen.

Title 26 U.S.C. § 7402 (b) provides as follows:

> (b) To enforce summons.
>
> If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have **jurisdiction by appropriate process** to compel such attendance, testimony, or production of books, papers, or other data. (emphasis added)

Title 26 U.S.C. § 7604 provides as follows:

> (a) Jurisdiction of district court.
>
> If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have **jurisdiction by appropriate process** to compel such attendance, testimony, or production of books, papers, records, or other data. (emphasis added)

STATEMENT OF THE CASE

This is a case which concerns the proper execution of summons documents, the authority for the summons, the question of identifying a claimed code provision for enforcement of a summons, and the jurisdiction of the District Court, and the Court of Appeals.

A. Statement of Facts.

This case arises from an administrative summons issued by an agent of the Internal Revenue Service to the petitioner. Noting the defects in the summons, and being aware that an administrative summons has no force of law, the petitioner did not respond to the summons.

B. Procedural Background.

On January 6, 1995, the District Court for the Eastern District of Pennsylvania issued an Order to Show Cause. That order stated in part, "Upon the Complaint, the Exhibits attached thereto, including the Declaration of Plaintiff Revenue Officer, Internal Revenue Service, and upon the Motion of plaintiffs' attorneys": The Order continued by saying, "IT IS FURTHER ORDERED that a copy of this Order, the Complaint and Exhibits be served upon the defendant by a revenue Officer of the Internal Revenue Service on or before the 26th day of January , 1995. Accordingly, the Clerk of this district shall not prepare a summons and forward it, together with a copy of the Complaint, to the United States Marshal as set forth in Fed.R.Civ. P. 4 (a)"

C. Argument. Statutory Construction.

The facts of this case raise the following questions:

(a) proper execution of the summons;
(b) the authority for the summons;
(c) the statute for summons not revealed; and,
(d) jurisdiction of the lower courts.

Since 1897, this Court has consistently ruled that where the words of a statute are unambiguous, statutory construction is

at an end.[1] On or about 1994, this Court again made the ruling that a statute means what it says and courts do resort to legislative history to cloud a statutory text that is clear.[2]

This Court has certainly made a statement concerning statutory construction that has endured for almost 100 years. Because of that truth, it is inconceivable that this Court would rule contrary to the clear meaning of the 46 words in 26 U.S.C. § 6065. The words of the body of the statute must endure in spite of various attempts to change its meaning by claiming the title supersedes the body of the statute. Such a claim is defeated by 26 U.S.C. § 7806 which precludes descriptive matter in a statute from giving any legal effect. The summons in this case was not executed as required by §6065.

---

[1] The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of the words and the rules of grammar. *U.S. v. Goldenberg, et al.*, 168 U.S. 95, 102 (1897). (emphasis added)

[2] When the words of a statute are unambiguous, the first canon of statutory construction--that courts must presume that a legislature says in a statute what it means and means in a statute what it says there--is also the last, and judicial inquiry is complete. Connecticut National Bank v. Germain, 503 US ____, p. ____, 117 L.Ed 2nd 391(1992) Last year the United States Supreme Court said, "courts do not resort to legislative history to cloud a statutory text that is clear" *Ratzlaf v. United States,* 510 US ____, p. ____, 126 L Ed 2d 615 (1994).

D. Argument. Authority to Issue Summons.

The respondents have relied on the authority to issue a summons as Commissioner's Delegation Order No. 4 which reads in pertinent part:

> Order No. 4 (Rev. 21)
> Authority to Issue Summonses, to
> Administer Oaths and Certify, and
> to Perform Other Functions
>
> 1(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(b), 301.7603-1, 301.7604-1 and 301.7605-1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954...

The respondents have further claimed that the summons was issued under the authority of Internal Revenue Code § 7602. As noted in Delegation Order No. 4, there is no authority to issue a summons under that code section. Delegation Order No. 4 continues by saying, "... and vested in the Commissioner of Internal Revenue Service by Treasury Order No. 150-10 to issue summons;"... The petitioner has previously submitted a copy of a document CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL DOCUMENT of what is purported to be Treasury Order 150-10. The two glaring errors on that Treasury Order cannot be ignored. The "certified to be a true copy of the original document bears no signature. Furthermore, there is a notation at the lower left bearing the date of 11-85, which conflicts with the date of April 22, 1982, the date of the Order. Until such time that there is a reasonable explanation of those errors, it must be presumed that Treasury Order 150-10 is invalid, therefore, it could not serve as the underlying authority for Delegation Order No. 4.

E. Argument. The statute for summons not revealed.

The authority for the summons in this case contained the following words "... issued under the authority of the Internal Revenue Code this ...". The Internal Revenue Code contains over 9,000 pages of statutes. It is not reasonable to state the authority for an action as found somewhere in those 9,000 + pages. In other documents associated with the summons, we find the statement that the agent had the authority to issue a summons under 26 U.S.C. § 7602. If he/she does indeed possess such authority, the logical question is why was not that authority stated on the face of the summons? Can this Court or any other Court claim jurisdiction without identifying the jurisdictional statute? If the answer is in the affirmative, then by like manner, the petitioner could respond to a summons under authority of the Internal Revenue Code by merely stating that he is responding under authority of the Internal Revenue Code. To take it a step further, the laws of this country are made in pursuance of the United States Constitution. Sec. 8, CL 18 of the Constitution states:

> All necessary and proper laws.
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

If the authority for a particular violation can be stated as found within 9,000 + pages, by extending that logic, one could merely write, "this summons is issued under the authority of the United States Constitution". Such a statement is not reasonable, but that form of logic was postulated by the lower courts in this case. Once again, if the agent has the authority to issue a summons under a particular statute, why was not that authority exercised?

F. Jurisdiction of the lower courts.

On January 6, 1995, the United States District Court for the Eastern District of Pennsylvania issued an Order to Show Cause which stated, "Upon the Complaint, the Exhibits attached thereto, including the Declaration of Plaintiff Revenue Officer, Internal Revenue Service, and upon the Motion of plaintiffs' attorneys": The Order continued by saying, "IT IS FURTHER ORDERED that a copy of this Order, the Complaint and Exhibits be served upon the defendant by a revenue Officer of the Internal Revenue Service on or before the 26th day of January , 1995. Accordingly, the Clerk of this district shall not prepare a summons and forward it, together with a copy of the Complaint, to the United States Marshal as set forth in Fed.R.Civ. P. 4 (a)"

This Court held in Reisman v. Caplin, 375 US 440, pp. 440 - 441, 11 L. Ed 2d 459:

> If a witness, to whom the Commissioner of Internal Revenue has issued a summons under § 7602 of the 1954 Internal Revenue Code for the production of a taxpayer's papers, indicates that he will voluntarily turn the papers over to the Commissioner, either the taxpayer or any affected party may restrain compliance until compliance is ordered by a court of competent jurisdiction. Reisman v. Caplin, 375 US 440, pp. 440 - 441, 11 L. Ed 2d 459.

First, in this case there was no mention of § 7602 of the 1954 Internal Revenue Code on the summons issued here. Second, the petitioner did indicate that he would restrain compliance. In that situation, it would appear that a court would be required to proceed under the following authority as stated in

this Court's opinion in Footnote 18 of United States v. Powell, 379 US 48, 13 L Ed 2d 112 which stated:

> Footnote 18:
>
> Because § 7604 (a) contains no provision specifying the procedure to be followed in invoking the court's jurisdiction, the **Federal Rules of Civil Procedure apply,** Martin v Chandis Securities Co. 128 F2d 731. The proceedings are instituted by **filing a complaint,** followed by answer and hearing. (emphasis added)

The government relies exclusively on United States v. Powell for the guidelines to be followed in enforcing a summons. Likewise, it would follow that the doctrine set forth in Powell would be controlling in the entire Court procedure. It is a fact that the correct procedure was not followed in this instance. First, there was no Complaint filed in the District Court. Second, the District Court ordered that the Federal Rules of Civil Procedure NOT BE FOLLOWED by saying, "Accordingly, the Clerk of this district shall not prepare a summons and forward it, together with a copy of the Complaint, to the United States Marshal as set forth in Fed.R.Civ. P. 4 (a)" The petitioner contends that the District Court could not violate the Powell doctrine. Fed.R.Civ. P. 4 (a) states:

(a) Form. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

Although Rule 4 (a) allows a summons to be amended, the Notes of Advisory Committee on 1993 amendments to Rules restricted that amendment to conform with former Rule 4 (h) which stated:

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

In this case, the Court ordered that the Clerk "shall not prepare a summons". Such action cannot be claimed under Rule 4 (a) which merely allows a summons to be amended. Here, there was no summons prepared.

The Court's order continued by saying:

> IT IS FURTHER ORDERED that within 10 days of service of copies of this Order, the Complaint, and Exhibits upon him, the defendant shall file and serve an answer, motion or other responsive pleading, together with an affidavit in support thereof.
>
> IT IS FURTHER ORDERED that only those issues raised in the pleadings or motions and supported by affidavit(s) will be considered by the Court on the above return date, and any uncontested allegation in the Complaint will be taken as admitted for the purpose of this enforcement proceeding.

The above order contains the following errors, (1) there was no summons prepared and issued by the Court as required by Rule 4 (b), (2) there was no Complaint filed in this action, and (3) by changing the time for a response from 20 days to 10 days, there was a substantial denial of rights to the petitioner which resulted in a denial of due process.

The only procedure for ENFORCING a summons is by filing a complaint in Federal District Court in accordance with the Federal Rules of Civil Procedure under §§ 7402 or 7604. Since there was no Complaint filed in this case under either of those statutes, the District Court lacked jurisdiction to enforce the summons.

The matter of jurisdiction can be raised at any time and cannot be waived as held by this Court in the following cases:

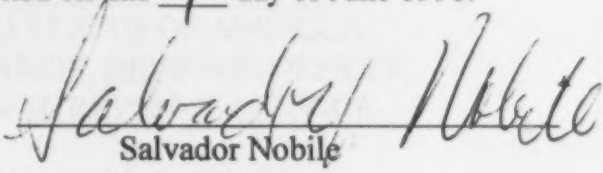
> As held by the Supreme Court, on every writ of error or appeal, the first and **fundamental question is that of jurisdiction**, first, of the United States Supreme Court, and **then of the court from which the record comes,** and this question **the Supreme Court is bound to ask and answer for itself,** even when not otherwise suggested, and without respect to the relation of the parties to it. Mansfield, C. & L. M. R. Co. v Swan (1884)111 US 379, 28 L Ed 462, 4 S Ct 510; Connell v Smiley (1895) 156 US 335, 39 L Ed 443, 15 S Ct 353. (emphasis added)
>
> It is fundamental that a determination which is made by a tribunal that is **without jurisdiction of the subject matter** is a nullity and that the **lack of jurisdiction may not be waived** or overcome by the consent or agreement of the parties. Mitchell v. Maurer, 293 US 237, 79 L Ed 338, 55 S Ct 162 (1934); United States v. Corrick, 298 US 435, 80 L. Ed 1263, 56 S Ct 829. (1936) (emphasis added)

CONCLUSION

This Court has stated that when the laws are clear and unambiguous, they say what they mean and mean what they say. Similarly, the Federal Rules of Civil Procedure were

promulgated to insure due process for the people. The petitioner has relied on the plain meaning of the laws and authorities as stated in his pleadings and as previously held by this Court In accordance with that doctrine petitioner requests that this Petition for Certiorari be granted.

Respectfully resubmitted on this 7 day of June 1996.



Salvador Nobile
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 95-1212, 95-1213

UNITED STATES OF AMERICA;
DIANA RAMOS, REVENUE OFFICER,
INTERNAL REVENUE SERVICE
v.
SALVADORE NOBILE,
Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil Action Nos. 94-Cv-07367 and 94-cv-0736)
District Judge: Honorable Daniel H. Huyett, 3rd

Submitted December 5, 1995

BEFORE: STAPLETON, NYGAARD and LEWIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgments of the district court entered March 2, 1995 and February 24, 1995, be and are hereby affirmed. Costs taxed against appellant.

By the Court,

(s) _____

App. 2

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 95-1212, 95-1213

UNITED STATES OF AMERICA;
DIANA RAMOS, REVENUE OFFICER,
INTERNAL REVENUE SERVICE
v.
SALVADORE NOBILE,
Appellant

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYUGAARD, ALITO, ROTH, LEWIS, McKEE, and SAROKIN, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

(s) _____

MAR 15 1995

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App. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA AND DIANA RAMOS, REVENUE OFFICER, INTERNAL REVENUE SERVICE, Plaintiffs, v. SALVADOR NOBILE, Defendant.	)))))))	C.A. No. 94-7366 Filed Feb. 24 1995

ORDER

AND NOW, this 22nd day of Feb., 1995, the Complaint herein having come on for hearing, and the Defendant, having appeared in person and having shown no cause why he should not produce the required information, it is

ORDERED, ADJUDGED AND DECREED that Defendant obey the Summons served upon him on April 5, 1994, by producing the books, records and other information as required by said Summons, before Plaintiff Revenue Officer or any proper officer of the Internal Revenue Service at such time and place as may be fixed by Plaintiff Revenue officer or any other proper officer of the Internal Revenue Service, and it is further

ORDER, ADJUDGED AND DECREED that the United States of America recover its cost incurred in the enforcing of the Summons.

BY THE COURT:

(s) _____

ENTERED: 2-24-95

CLERK OF COURT

App. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA AND DIANA RAMOS, REVENUE OFFICER, INTERNAL REVENUE SERVICE,	)	
Plaintiffs,	)	C.A. No. 94-7366
v.	)	
SALVADOR NOBILE,	)	FILED MAR-2 1995.
Defendant.	)	

ORDER

HUYETT, J. February 23, 1995

Upon consideration of Defendant's Answer to Show Cause Order and Motion to Dismiss, and the fact that the Court has signed an order to enforce the summons, Defendant's motion is DENIED.

IT IS SO ORDERED.

(s) _____
Huyett, J.

ENTERED 3-2-95

CLERK OF COURT